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REMARKS

Entry of this Amendment is proper because it does not raise any new issues requiring further search by the Examiner, narrows the issues on appeal, and is believed to place the present application in condition for immediate allowance.

Claims 1-24 are all the claims presently pending in the application. Claims 1-4, 7, 8, 10, 11, 14, 18, 21, 23, and 24 have been amended to define more clearly and particularly the features of the present invention.

It is noted that the claim amendments are made only for more particularly pointing out the invention, and not for distinguishing the invention over the prior art, narrowing the claims or for any statutory requirements of patentability. Further, Applicant specifically states that no amendment to any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Claims 7, 18, 20, 22, and 23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cherkasova, et al. (U.S. Patent No. 6,360,270; hereinafter "Cherkasova"). Claims 18-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cole, et al. (U.S. Patent No. 5,335,224; hereinafter "Cole"). Claims 1-4, 6, 8-11, 13, 14, 16, 17, 19, 21, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova and claims 5, 12, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova in view of Fodor, et al. (U.S. Patent No. 6,438,104; hereinafter "Fodor").

These rejections are respectfully traversed in the following discussion.

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I. THE CLAIMED INVENTION

The exemplary aspects of the claimed invention are directed to a server and network system and received load control method.

In an illustrative, non-limiting aspect of the present invention, as defined by independent claim 1, a server includes processing means for processing data transferred from plural clients, comparing means for comparing an amount of received load corresponding to received data transferred from plural clients with a designated value, and judging means for judging whether a part of the received data should be discarded prior to receipt of at least a portion of the amount of received load by the processing means of the server. The server controls the received load corresponding to the received data transferred from the plural clients based on a judged result of the judging means.

In another exemplary aspect of the invention, as defined for example, by independent claim 3, a server includes processing means for processing data, shaper value setting means for setting a shaper value based on a receiving capacity of the processing means of the server, and shaper means for comparing an amount of received load corresponding to received data transferred from plural clients and the shaper value, and judging whether a part of the received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the received load by the processing means of the server.

In another exemplary aspect of the invention, as defined for example, by independent claim 7, a network system includes plural clients connecting to a network,

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and a server connecting to the plural clients through the network, wherein the server includes a processing unit. The server controls an amount of received load corresponding to the received data transferred from the plural clients, and compares the amount of the received load corresponding to the received data with a designated value prior to receipt of at least a portion of the amount of received load by the processing unit.

In another exemplary aspect of the invention, as defined for example, by independent claim 10, a network system includes plural clients connecting to a network, and a server connecting the plural clients through the network. The server includes a processing unit that processes data transferred from the plural clients, shaper value setting means for setting a shaper value based on a receiving capacity of the processing unit of the server, and shaper means for comparing an amount of received load corresponding to received data transferred from the plural clients and the shaper value, and judging whether a part of the received data transferred from the plural clients should be discarded prior to receipt of at least a portion of the amount of received load by the processing unit.

In another exemplary aspect of the invention, as defined for example, by independent claim 14, a received load control method at a network system in which a server connects to plural clients through a network includes setting a shaper value based on a receiving capacity of a processing unit of the server, comparing an amount of received load corresponding to received data transferred from the plural clients and the shaper value, and discarding, prior to receipt of at least a portion of the received data to the processing unit, a part of the received data exceeding the shaper value when the amount of the received load exceeds the shaper value.

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In another exemplary aspect of the invention, as defined for example, by independent claim 18, a server includes means for processing data, means for setting a shaper value based on a receiving capacity of the means for processing data, and means for comparing an amount of received load corresponding to data received from a plurality of clients with the shaper value prior to receipt of at least a portion of the data by the means for processing data.

In another exemplary embodiment of the invention, as defined for example, by independent claim 20, a received load control method includes setting a shaper value corresponding to a data receiving capacity of a processing unit of a server, determining whether an amount of received data is less than the shaper value, transmitting the amount of received data to the processing unit if the amount of received data is less than the shaper value, and transmitting a part of the amount of the received data to the processing unit if the amount of received data is not less than the shaper value.

In another exemplary embodiment of the invention, as defined for example, by independent claim 24, a server includes a processing unit that processes data, a comparator that compares an amount of received load corresponding to received data transferred from plural clients with a designated value, and a judger that judges whether a part of the received data should be discarded prior to receipt of at least a portion of the received data by the processing unit. The server controls the received load corresponding to the received data transferred from the plural clients based on a judged result of the judger.

Applicants disclose that, when a part of the received data has to be discarded at the

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processing unit with storage, the performance of the processing unit can be deteriorated and in some cases may stop the operation at the processing unit with storage (e.g., see specification at page 9, lines 10-12).

Thus, in order to avoid this problem of deterioration of performance of the processing unit, an exemplary feature of the claimed invention provides a shaper that limits the received data load to a designated value so that the received data load exceeding the data receiving capacity of the processing unit with storage is not applied to the processing unit with storage at all. The designated value is set corresponding to the data receiving capacity of the processing unit with storage (e.g., see specification at page 9, lines 13-18). That is, the discarding is not performed at the processing unit with storage (e.g., see specification at page 10, lines 1-3 and 12-13).

Another exemplary aspect of the claimed invention sets the designated value of the shaper to the data receiving capacity of the processing unit with storage, including a margin (e.g., see specification at page 9, lines 16-23). That is, the shaper operates to make the receiving load limit at the processing unit less than the receiving capacity of the processing unit (i.e., the margin = the receiving capacity of the processing unit - the designated value). As such, the processing unit can execute detecting of an abnormal state, displaying the abnormal state, and recovering processes by using the margin which is provided by the shaper discarding the exceeded received data.

Thus, the claimed invention is capable of preventing a deterioration of the performance of the processing unit and also preventing the occurrence of stopping of the operation of the processing unit (e.g., see specification at page 10, lines 14-21).

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II. THE PRIOR ART REJECTIONS

A. Claims 7, 18, 20, 22, and 23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Cherkasova.

In the Response to Arguments, the Examiner alleges that:

First, regarding the issue of Cherkasova disclosing an undesirability to discard packets, while Cherkasova's system does discuss a desirability of a system to respond to all messages, Cherkasova's system also discusses that the prior art well known systems did in fact discard packets that could not be handled by a host (col. 2, lines 30-32, "also, the messages which are not admitted to the host are generally not handled at all"). Thus, Cherkasova's system actually improves on the prior art method of discarding packets, rather than teaching away from it.

Second, regarding the issue of determining when adequate system resources are available, Cherkasova discloses the claimed step of comparing the amount of received load corresponding to the received data with a designated value (it compares the "server utilization" with a "threshold." This is clear from the disclosure of Cherkasova.

(see Office Action at page 19, lines 1-12).

The Examiner further alleges that:

Applicant contends that Cherkasova does not necessarily disclose or suggest a "comparing means for comparing an amount of received load corresponding to received data transferred from plural clients with a designated value," as claimed in claim 1. Again, Examiner respectfully disagrees, because Cherkasova discloses comparing the amount of client load at a server to a "threshold".

(see Office Action at page 19, lines 13-17).

For the following reasons, Applicant respectfully submits that Cherkasova does

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not disclose or suggest all of the features of the claimed invention, and therefore,
respectfully traverses this rejection.

Independent claim 7 recites, *inter alia*, a network system, including:

plural clients connecting to a network; and
a server connecting to said plural clients through said
network,
wherein said server includes a processing unit,
wherein said server controls an amount of received load
corresponding to the received data transferred from said plural
clients, and
wherein said server compares the amount of said received
load corresponding to said received data with a designated value
prior to receipt of at least a portion of said amount of received
load by said processing unit (emphasis added).

That is, the server according to an exemplary aspect of the claimed invention
compares the amount of the received load corresponding to the received data with a
designated value prior to receipt of at least a portion of the amount of received load by the
processing unit.

Accordingly, the claimed invention is capable of avoiding problems with
deterioration of performance of the processing unit, since the received data load
exceeding the data receiving capacity of the processing unit is not applied to the
processing unit with storage at all. That is, the comparing is *not* performed at the
processing unit with storage (e.g., see specification at page 9, lines 13-18, and page 10,
lines 1-3 and 12-13). Thus, the claimed invention is capable of preventing a deterioration
of the performance of the processing unit and also preventing the occurrence of stopping
of the operation of the processing unit (e.g., see specification at page 10, lines 14-21).

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Applicant submits that Cherkasova clearly does not disclose or suggest all of the novel and unobvious features of the claimed invention, for example, as defined by independent claim 7, or for that matter, the advantages derived therefrom.

Instead, Cherkasova is concerned with ensuring that messages which relate to a session in-progress generally are admitted (e.g., see Cherkasova at column 2, lines 40-47).

That is, Cherkasova simply discloses comparing a new request message with an entry transaction list (e.g., see Figure 2; see also column 2, lines 47-49, and column 5, lines 9-21 and lines 41-65). If the new request message corresponds to a session that is identified in the transaction list (i.e., the new request message is part of a current session), then the processing proceeds directly to the server (see Figure 2, steps 32, 34, and 42).

Cherkasova does not, however, disclose, suggest, or even mention that a determination is made as to whether sufficient resources are available in the server if the new request message is part of a current session. Instead, Cherkasova discloses that, if the new request message corresponds to a session that is in-progress (i.e., a current session), then the processing proceeds directly to the server *without* determining whether sufficient resources are available in the server.

On the other hand, if the new request message does not correspond to a session that is identified in the transaction list (i.e., the new request message is part of a new session), only then does the admission controller determine whether sufficient resources are available in the server to adequately service a new session (e.g., see column 5, lines 41-46; see also, Figure 2, steps 32, 34, and 36).

That is, the admission controller only determines whether adequate system

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resources are available in the server when the new request message does not correspond to a session that is identified in the transaction list (e.g., see Cherkasova at column 3, lines 64-67). Alternatively, if the new message is identified in the transaction list, then the new message is passed directly to the server without regard for the availability of the system resources of the server.

Thus, Applicant respectfully submits that Cherkasova clearly is different than the claimed invention, and does not disclose or suggest all of the features of the claimed invention as defined by independent claim 7.

To summarize, Cherkasova compares the new message to a transaction list to determine if the new message is part of a current session (e.g., see column 2, lines 47-49).

In contrast, the claimed invention compares the amount of the received load corresponding to the received data with a designated value prior to receipt of at least a portion of said amount of received load by said processing unit.

Thus, Cherkasova clearly does not disclose or suggest all of the features of independent claim 7. Accordingly, Applicant requests that the Examiner withdraw the anticipation rejection of claim 7.

For somewhat similar reasons as those set forth above, Applicant submits that Cherkasova also does not disclose or suggest all of the features of independent claims 18 and 20.

For example, independent claim 18 recites, *inter alia*, a server, including:

means for processing data;
means for setting a shaper value based on a receiving
capacity of said means for processing data; and

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means for comparing an amount of received load
corresponding to data received from a plurality of clients with
said shaper value prior to receipt of at least a portion of said data
by said means for processing data (emphasis added).

Accordingly, the exemplary method as defined by claim 18 compares the amount
of received data prior to receipt of at least a portion of the data by the means for
processing data. Thus, the performance of the processing unit would not be deteriorated
(or the operation of the processing unit would not be caused to stop) because the
processing unit would not perform the step of comparing, and moreover, would not
receive an amount of data exceeding its receiving capacity at all.

Cherkasova clearly does not disclose, suggest, or even contemplate the features of
independent claim 18, or for that matter, the advantages derived therefrom.

Indeed, Cherkasova does not disclose or suggest any structure, equivalents thereof,
or identity of function necessary for the claimed “means for processing data”, “means for
setting a shaper value” and/or “means for comparing”, as defined in the present
application.

On the other hand, independent claim 20 recites, *inter alia*, a received load control
method including:

setting a shaper value corresponding to a data receiving
capacity of a processing unit of a server;
determining whether an amount of received data is less than
said shaper value;
transmitting said amount of received data to said processing
unit if said amount of received data is less than said shaper
value; and
transmitting a part of said amount of said received data to
said processing unit if said amount of received data is not less

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than said shaper value (emphasis added).

Accordingly, the exemplary method as defined by claim 20 transmits the amount of received data to the processing unit if the amount of received data is less than the shaper value, or transmits a part of the amount of the received data to the processing unit if the amount of received data is not less than the shaper value.

Thus, the step of determining whether an amount of received data is less than (or not less than) the shaper value clearly is performed prior to transmitting a part of the amount of received data to the processing unit. Accordingly, the performance of the processing unit would not be deteriorated or the operation of the processing unit would not be caused to stop because the processing unit would not perform the step of determining.

Cherkasova clearly does not disclose, suggest, or even contemplate the features of independent claim 20, or for that matter, the advantages derived therefrom.

On the other hand, with respect to dependent claims 22 and 23, which depend from independent claim 1, Applicant respectfully disagree with the Examiner's position.

Claims 22 and 23 are patentable over Cherkasova by virtue of their dependency from claim 1, as well as for the additional features recited therein.

For example, in the exemplary aspects of the invention as defined by dependent claim 23, the "designated value is set based on a receiving capacity of said processing means of said server and a predetermined margin of receiving capacity of said processing means of said server" (emphasis added).

Applicant submits that Cherkasova clearly does not disclose, suggest, or even

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contemplate there exemplary features of the claimed invention.

For the foregoing reasons, Applicant submits that Cherkasova does not disclose or suggest all of the novel and unobvious features of claims 7, 18, 20, 22, and 23, or the advantages derived therefrom. Therefore, Applicant requests that the Examiner withdraw the rejection of these claims and permit these claims to pass to immediate allowance.

B. Claims 18-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cole.

The Examiner alleges that Cole discloses all of the features of claims 18-24.

Applicant respectfully disagrees with the Examiner's position, and therefore, traverses this rejection.

As mentioned above, independent claim 18 recites, *inter alia*, a server, including:

means for processing data;
means for setting a shaper value based on a receiving capacity of said means for processing data; and
means for comparing an amount of received load
corresponding to data received from a plurality of clients with said shaper value prior to receipt of at least a portion of said data by said means for processing data (emphasis added).

The server according to an exemplary aspect of the claimed invention compares the amount of the received load corresponding to the received data with a shaper value prior to receipt of at least a portion of the data by the means for processing.

Accordingly, the claimed invention is capable of avoiding problems with deterioration of performance of the means for processing, since the received data load

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exceeding the data receiving capacity of the means for processing is not applied to the means for processing at all. That is, the comparing is not performed at the means for processing (e.g., see specification at page 9, lines 13-18, and page 10, lines 1-3 and 12-13). Thus, the claimed invention is capable of preventing a deterioration of the performance of the means for processing and also preventing the occurrence of stopping of the operation of the means for processing (e.g., see specification at page 10, lines 14-21).

In comparison, Cole does not disclose or suggest any structure, equivalents thereof, or identity of function necessary for the claimed “means for processing”, “means for setting” and/or “means for comparing”, as defined in the present application.

Instead, Cole discloses that the “[d]ata elements received by communication interface 903 are supplied to processor 905” (e.g., see Cole at column 8, lines 5-6).

Contrary to the claimed invention, Cole specifically states that:

Processor 905 controls the operation of internal communications resource 201 by executing the programs stored in program store 907, which includes dropping process 913 and service process 915. Thus, processor 905 and dropping process 913 form a means for dropping an arriving data element while processor 905 and dropping process element 913 form a data element server for serving data elements stored in queue 301.

(e.g., see Cole at column 8, lines 8-16; emphasis added).

Moreover, Cole specifically states that “the dropping means formed by processor 905 and dropping process 913 drops an arriving data elements that causes” congestion thresholds to be exceeded (e.g., see Cole at column 8, lines 21-23).

Accordingly, Cole clearly discloses that the processor itself performs the dropping

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process. Thus, as explained in the present application, the processor of Cole would be susceptible to the problems overcome by the claimed invention.

That is, Cole does not disclose or suggest “means for comparing an amount of received load corresponding to data received from a plurality of clients with said shaper value prior to receipt of at least a portion of said data by said means for processing data”, as claimed, such that deterioration of the performance of the means for processing can be avoided and/or that the occurrence of stopping of the operation of the means for processing can be avoided.

Accordingly, Cole does not disclose, suggest, or even mention all of the features of independent claim 18. Indeed, Cole does not disclose or suggest any structure, equivalents thereof, or identity of function necessary for the claimed “means for processing data”, “means for setting a shaper value” and/or “means for comparing”, as defined in the present application.

For somewhat similar reasons, Applicant submits that independent claim 20 also is not anticipated by (or rendered obvious from) Cole.

Also as mentioned above, independent claim 20 recites, *inter alia*, a received load control method including:

- setting a shaper value corresponding to a data receiving capacity of a processing unit of a server;
- determining whether an amount of received data is less than said shaper value;
- transmitting said amount of received data to said processing unit if said amount of received data is less than said shaper value; and
- transmitting a part of said amount of said received data to said processing unit if said amount of received data is not less

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than said shaper value.

The exemplary method as defined by claim 20 transmits the amount of received data to the processing unit if the amount of received data is less than the shaper value, or transmits a part of the amount of the received data to the processing unit if the amount of received data is not less than the shaper value.

Thus, the step of determining whether an amount of received data is less than (or not less than) the shaper value clearly is performed prior to transmitting a part of the amount of received data to the processing unit. Accordingly, the performance of the processing unit would not be deteriorated or the operation of the processing unit would not be caused to stop because the processing unit would not perform the step of determining.

Cole, on the other hand, clearly does not disclose, suggest, or even contemplate determining whether an amount of received data would exceed the capacity of the processing unit prior to transmitting the data to the processing unit. Instead, Cole specifically states that the processor itself performs the dropping process. Thus, the processor in Cole also must receive all of the data in order to perform the dropping operation.

Accordingly, Cole also does not disclose, suggest, or even mention all of the features of independent claim 20.

Claim 21 also is patentable over Cole by virtue of its dependency from claim 20, as well as for the addition features recited therein.

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Claims 22 and 23 also are patentable over Cole by virtue of their dependency from independent claim 1 (which is not even rejected based on Cole), as well as for the addition features recited therein.

On the other hand, independent claim 24 is patentable over Cole for somewhat similar reasons as those set forth above.

For example, independent claim 24 recites, *inter alia*, a server including:

a processing unit that processes data;
a comparator that compares an amount of received load
corresponding to received data transferred from plural clients
with a designated value; and
a judger that judges whether a part of said received data
should be discarded prior to receipt of at least a portion of said
received data by said processing unit,
wherein said server controls said received load
corresponding to said received data transferred from said plural
clients based on a judged result of said judger.

For somewhat similar reasons as those set forth above, Cole clearly does not disclose or suggest “a judger that judges whether a part of said received data should be discarded prior to receipt of at least a portion of said received data by said processing unit”, as claimed in claim 24.

Accordingly, Cole does not disclose, suggest, or even mention all of the features of independent claim 24.

C. Claims 1-4, 6, 8-11, 13, 14, 16, 17, 19, 21, and 24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova. For at least the following reasons, Applicant respectfully traverses this rejection.

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Applicant submits that claims 1-4, 6, 8-11, 13, 14, 16, 17, 19, 21, and 24 would not have been obvious from Cherkasova for the following reasons. Moreover, Applicant submits that, even assuming *arguendo* that it would have been obvious to modify Cherkasova in the manner alleged, Cherkasova still would not disclose all of the features of the novel and unobvious combination of elements according to the claimed invention.

For example, with respect to independent claim 1, the Examiner acknowledges that “Cherkasova does not explicitly state that the received data is necessarily ‘discarded’”, but instead, alleges that by mentioning that “*refused connection often result in aborted sessions*” (e.g., see Cherkasova at column 3, lines 41-42), Cherkasova “*at least suggest getting rid of, or discarding, unwanted load caused by the client requests*” (e.g., see Office Action at page 8, numbered paragraph 3, lines 16-24).

Thus, the Examiner alleges that “*it would have been obvious for the admission controller in Cherkasova to discard packets when the load is above a threshold, to eliminate the additional resources required for the deferral manager*” (see Office Action at page 9, lines 3-5).

Moreover, in the Response to Arguments, the Examiner alleges that:

Cherkasova's system also discusses that the prior art well known systems did in fact discard packets that could not be handled by a host (col. 2, lines 30-32, “also, the messages which are not admitted to the host are generally not handled at all”). Thus, Cherkasova's system actually improves on the prior art method of discarding packets, rather than teaching away from it.

Applicant respectfully disagrees with the Examiner's position for several reasons.

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First, as set forth above, the Examiner alleges that “*Cherkasova’s system actually improves on the prior art method of discarding packets, rather than teaching away from it.*”

However, contrary to the Examiner’s position, Applicant submits that Cherkasova clearly *improves* on the prior art by teaching away from the prior art.

That is, Cherkasova clearly does not disclose or suggest discarding the packets at all. Instead, Cherkasova specifically states that the “admission controller defers the messages otherwise” (e.g., see Cherkasova at Abstract; see Figure 1 at deferral manager 18; Figure 2 at reference numeral 38; see also column 4, lines 50-67 and column 5, lines 1-8).

Indeed, Cherkasova sets forth several examples of “deferring” the messages at column 4, lines 50-67 and column 5, lines 1-8. None of these examples discloses or suggests “discarding” the messages.

In fact, after pointing out that in the prior art “*the messages which are not admitted to the host are generally not handled at all*”, Cherkasova specifically states that “*a need exists for an admission control system which responds to all messages, whether or not those messages are actually admitted*” (e.g., see Cherkasova at column 2, lines 42-44).

Thus, the teachings of Cherkasova are contrary to (i.e., teach away from) the motivation provided by the Office Action for modifying Cherkasova to arrive at the claimed invention.

Thus, Cherkasova teaches away from discarding messages and, instead, teaches responding to all messages.

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Accordingly, Applicant submits that it would not have been obvious to modify Cherkasova in the manner alleged in the Office Action to arrive at the claimed invention since the disclosure of Cherkasova clearly does not support the Examiner's alleged motivation for modifying Cherkasova.

On the other hand, even assuming *arguendo* that it would have been obvious to modify Cherkasova in the manner alleged, Applicant submits that Cherkasova still would not disclose all of the features of the novel and unobvious combination of elements according to the claimed invention.

As mentioned above, the server according to an exemplary aspect of the claimed invention compares the amount of the received load corresponding to the received data with a designated value, and judges whether a part of the received data should be discarded prior to receipt of at least a portion of the amount of received load by the processing unit.

For example, independent claim 1 recites, *inter alia*, a server including:

processing means for processing data transferred from plural clients;

comparing means for comparing an amount of received load corresponding to received data transferred from plural clients with a designated value; and

judging means for judging whether a part of said received data should be discarded prior to receipt of at least a portion of said amount of received load by said processing means of said server.

wherein said server controls said received load corresponding to said received data transferred from said plural clients based on a judged result of said judging means (emphasis added).

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Accordingly, the claimed invention is capable of avoiding problems with deterioration of performance of the processing unit, since the received data load exceeding the data receiving capacity of the processing unit is not applied to the processing unit with storage at all. That is, the comparing is not performed at the processing unit with storage (e.g., see specification at page 9, lines 13-18, and page 10, lines 1-3 and 12-13). Thus, the claimed invention is capable of preventing a deterioration of the performance of the processing unit and also preventing the occurrence of stopping of the operation of the processing unit (e.g., see specification at page 10, lines 14-21).

Applicant submits that Cherkasova clearly does not disclose or suggest all of the novel and unobvious features of the claimed invention, for example, as defined by independent claim 1, or for that matter, the advantages derived therefrom.

Instead, as mentioned above, Cherkasova is concerned with ensuring that messages which relate to a session in-progress generally are admitted (e.g., see Cherkasova at column 2, lines 40-47).

Cherkasova does not, however, disclose, suggest, or for that matter even mention, that a determination is made as to whether sufficient resources are available in the server if a new request message is part of a current session. Instead, Cherkasova discloses that, if the new request message corresponds to a session that is in-progress (i.e., a current session), then the processing proceeds directly to the server (i.e., *without* determining whether sufficient resources are available in the server).

That is, the admission controller only determines whether adequate system resources are available in the server when the new request message does not correspond

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to a session that is identified in the transaction list (e.g., see Cherkasova at column 3, lines 64-67). Alternatively, if the new message is identified in the transaction list, then the new message is passed directly to the server without regard for the availability of the system resources of the server.

For the foregoing reasons, Applicant submits that, even assuming *arguendo* that it would have been obvious to modify Cherkasova in the manner alleged, Cherkasova still would not disclose or suggest all of the features of the novel and unobvious combination of elements according to the claimed invention.

For somewhat similar reasons as those set forth above, Applicant submits that independent claims 3, 10, 14, and 24 also are not disclosed or suggested by Cherkasova.

Claims 2, 4, 6, 8, 9, 11, 13, 16, 17, 19, and 21 also are patentable over Cherkasova at least by virtue of their respective dependencies from independent claims 1, 3, 10, 14, and 24.

D. Claims 5, 12, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cherkasova in view of Fodor.

For the reasons set forth above, Cherkasova neither discloses nor suggests all of the features of claims 3, 10, and 15, from which claims 5, 12, and 15 depend. Moreover, Fodor does not make up for the deficiencies of Cherkasova. Indeed, Fodor is not even relied upon for such features.

Therefore, Applicant respectfully submits that claims 5, 12, and 15 are patentable over Cherkasova and Fodor, either alone or in combination.

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III. CONCLUSION


In view of the foregoing, Applicant submits that claims 1-24, all the claims presently pending in the application, are patentably distinct over the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue at the earliest possible time.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephonic or personal interview.

The Commissioner is hereby authorized to charge any deficiency in fees or to credit any overpayment in fees to Attorney's Deposit Account No. 50-0481.

Respectfully Submitted,

Date: October 15, 2004


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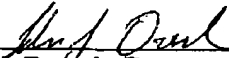
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Docket No. DP-696 US
(MAR.051)

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CERTIFICATE OF TRANSMISSION

I certify that I transmitted via facsimile to (703) 872-9306 the enclosed Amendment under 37 C.F.R. § 1.116 to Examiner Bradley E. Edelman on October 15, 2004.



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